



BOARD OF APPEALS  
Diane R. Gordon, Co-Chair  
Harry Miller, Co-Chair  
Bailey S. Silbert

# *Town of Brookline*

## *Massachusetts*

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Patrick J. Ward, Secretary

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. BOA 070056

Petitioners, Jonathan and Debra Kurtzman, applied to the Building Commissioner for permission to subdivide the lot at 71 Harvard Avenue and to transfer one parcel to the adjacent lot at 63 Harvard Avenue and construct a parking lot per plans. The application was denied and an appeal was taken to this Board.

On September 13, 2007, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed November 1, 2007 at 7:15 p.m. in the Main Library, Hunneman Hall, as the time and place of a hearing. Notice of the hearing was mailed to the petitioners, to their attorney (if any of record), to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published October 11, 2007 and October 18, 2007, in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

## NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: KURTZMAN JONATHAN KURTZMAN DEBRA

Location of Premises: **71 HARVARD AVE BRKL**

Date of Hearing: **11/01/2007**

Time of Hearing: **7:15 p.m.**

Place of Hearing: **Main Library, Hunneman Hall 2<sup>nd</sup> Floor**

A public hearing will be held for a variance and/or special permit from

1. **5.01; Lot Area or Yards Required; Variance Required.**
2. **5.43; Exceptions to Yard and Setback Regulations; Special Permit Required.**
3. **5.70; Rear yard Requirements; Variance Required.**
4. **5.74; Fences and Terraces in Rear Yards; Variance Required.**
5. **For the Design of All Off-Street Parking Facilities:**
  - 6.04.5.b; Variance Required.**
  - 6.04.5.c; Special Permit Required.**
  - 6.04.12; Special Permit Required.**
6. **9.00; Enforcement; Variance Required.**

Of the Zoning By-Law to subdivide the lot at 71 Harvard Ave and to transfer one parcel to the adjacent lot at 63 Harvard Ave and construct a parking lot per plans

at **71 HARVARD AVE BRKL**

Said Premise located in an M-1.0 district.

*Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.*



*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

**Diane R. Gordon  
Harry Miller  
Bailey Silbert**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chair, Enid Starr and Board members Bailey Silbert, and Jesse Geller. The petitioners were represented at the hearing by Attorney Jeffrey P. Allen of Seegel, Lipshutz & Wilchins, P.C., 20 William Street, Suite 130, Wellesley, MA.

At the hearing, Lara Curtis, Planner, distributed the Planning Board Report dated October 18, 2007. Mr. Allen then described the factual background for the petition as follows:

71 Harvard Avenue is a three-story mansard-style two-family dwelling with a detached two-story mansard-style carriage barn located in the Harvard Avenue Local Historic District. The property sits on a rectangular-shaped, 19,334 square foot lot. The surrounding neighborhood is composed of a range of dwelling types, including single-, two-, and three-family homes, as well as multi-family buildings. The petitioners' application also involves 63-67 Harvard Avenue, the lot immediately to the east of the subject property. The petitioners, Jonathan and Debra Kurtzman, are seeking to subdivide the lot at 71 Harvard Avenue and transfer one parcel to the adjacent lot at 63-67 Harvard Avenue and construct a parking lot. The current lot at 71 Harvard Avenue is 19,334 square feet, and contains a two-family detached dwelling and a carriage barn at the rear of the property. The petitioners are proposing to subdivide a 5,702 s.f. portion of the lot which contains the carriage barn, and transfer the parcel to the adjacent lot at 63-67



Harvard Avenue as part of a related Board of Appeals case (Case No. 70055). Additionally, the petitioners will be creating a parking area along the new eastern property line by expanding an existing paved parking area. The parking area will contain five (5) parking spaces, which will meet the parking requirements for the two-family dwelling at 71 Harvard Avenue. Two additional parking spaces, which will be constructed on 63-67 Harvard Avenue and directly adjacent to the new parking area, will be accessed by an easement over 71 Harvard Avenue.

Mr. Allen reviewed the zoning relief necessary for the proposed building:

**Section 5.01 - Lot Area or Yards Required**

The lot or yard area required for any new building or use shall not include any part of a lot that is required by any other building or use to comply with any requirements of the Zoning Bylaw. By subdividing the lot, the petitioners will make 71 Harvard Avenue non-conforming in rear yard setbacks, which would require a variance from this section. However, this section will not be applicable if a special permit is granted for rear yard setbacks under Section 5.43.

**Section 5.70 - Rear Yard Requirements**

**Section 5.74 - Fences and Terraces in Rear Yards**

Uncovered porches or decks may extend into the rear yard setback up to 50 percent, but in no case be located less than 6 feet to the rear lot line.

	Required/Allowed	Existing	Proposed	Relief
Rear Yard Setback	30 feet	~66 feet	~20 feet	<u>Variance / Special Permit*</u>
Fences and Terraces in Rear Yards (rear deck)	May Project 15 feet into Rear Yard	~60.3 feet from rear lot line	~10.5 feet from rear lot line	<u>Variance / Special Permit*</u>

- \* Under **Section 5.43**, the Board of Appeals may waive yard and setback requirements if the applicant provides a counterbalancing amenity. In this case, preservation of the carriage barn as part of development at 63-67 Harvard Avenue under Case No. 70055 and landscaping will serve as the amenity.

**Section 6.04.5.b – Design of All Off-Street Parking Facilities**

**Section 6.04.5.e – Design of All Off-Street Parking Facilities**

In all districts, the Board of Appeals may by special permit authorize the owners of adjoining properties to establish common driveways under mutual easements provided that any such special permit shall not become effective until the easement has been recorded.



Proposed Parking Area	Required	Proposed	Relief
Parking / Driveway Side Setback	5 feet	0 feet	<u>Variance / Special Permit</u> **

\*\* Under Section 6.04.12, the Board of Appeals may waive dimensional requirements for parking facilities to serve existing buildings.

#### Section 9.00 – Enforcement

No person shall use or permit the use of any building or part thereof hereafter erected, or altered in its use or construction in whole or in part, or any building when the open spaces in the lot upon which it stands have been reduced in area or shape, until the Building Commissioner has issued a certificate of occupancy and use under the Commonwealth of Massachusetts State Building Code, and until the Building Commissioner has issued a certificate to the effect that the building so erected or the part thereof so altered, the proposed use thereof, the size of the lot and its yards and setbacks, and all other applicable requirements, conform to the provisions of this By-law. By subdividing the lot, the petitioners will make 71 Harvard Avenue non-conforming in rear yard setbacks, which would require a variance from this section. However, this section will not be applicable if a special permit is granted for rear yard setbacks under Section 5.43.

In support of the requested special permits, Mr. Allen stated that the proposed project, in conjunction with the related project at 63-65 Harvard Avenue, will result in a reduced overall density than that which could be developed for the lots, while at the same time, the combined projects will serve to preserve the carriage barns and improve the landscaping for the lots. Considerable effort was made by the petitioners to address the concerns of their neighbors and the Preservation Commission.

The Chairperson inquired if any members of the public wished to be heard. Numerous members of the public expressed their strong support for the project. No members of the public expressed opposition to the project.

Lara Curtis, on behalf of the Planning Board, gave the following report:

The Planning Board is supportive of this proposal to subdivide the lot at 71 Harvard Avenue and transfer one parcel to the adjacent lot at 63-67 Harvard Avenue and construct a parking lot. The applicant has worked extensively with the Preservation Commission and with the local residents to come up with a design that is satisfactory to most parties involved. The applicant first applied to the Preservation Commission in May 2007 to redevelop the



property, and the plans before the Board of Appeals are a result of several meetings with the Commission and the neighborhood.

The reconfiguration of the lot boundaries and transfer of the carriage barn to the adjacent property will not alter the appearance of the site from the surrounding neighborhood, as the carriage barn will still echo the design of the main house and will appear to be architecturally and spatially associated. The open nature of the site between 71 and 63-67 Harvard Avenue will aid in maintaining the appearance of two large historic homes addressing the street, with carriage barns in the rear. The granting of rear setback relief due to the reconfigured lot lines will not significantly affect these visual and spatial relationships. The subdivision of land shall be indicated on an ANR plan, to be endorsed by the Planning Board and recorded with the Registry of Deeds.

The proposed parking area represents a minimal expansion to the existing parking area, and should not be injurious to the aesthetics of the site. Although the parking spaces will be located at a 0' setback on the side property line, a landscaped buffer on the opposite side of the property line will exist at 63-67 Harvard Avenue. Access to the two adjoining parking spaces at 63-67 Harvard Avenue will require an easement, which should be indicated on the ANR plan and recorded at the Registry of Deeds.

Therefore, the Planning Board recommends approval of the proposal and the submitted plans, including those titled "63-71 Harvard Ave., Brookline, MA," prepared by O'Sullivan Architects and last dated August 30, 2007, and August 14, 2007, and the site plan prepared by James Abely and last dated August 23, 2007, subject to the following conditions:

Frank Hitchcock, Senior Building Inspector, spoke on behalf of the Building Commissioner. He restated the various sections of the Zoning By-Law under which relief is needed. The Building Department has no objections to the proposal, the relief required or to the conditions recommended by the Planning Board. The Building Department will ensure that all State Code provisions are satisfied.

The Board having deliberated on this matter, considered the foregoing testimony and concluded that it is desirable to grant all the relief requested by this petitioners, subject to certain conditions.

The Board considered the visual relationships of site, the proposed subdivision, and the proposed new parking lot, to the use, scale, and architecture of the surrounding community. The Board has



considered whether the proposal creates harmonious visual relationships and the Board has determined that the relationship is, in general, harmonious. The Board further finds that the proposal to subdivide the lot, transfer one parcel with existing carriage barn to the adjacent property, and construct a new parking area, will not be more detrimental to the neighborhood than the existing conditions. The use as proposed to be developed and the site design are aesthetically pleasing. The proposed design is adequate and appropriate for the neighborhood. The proposed development will not have any substantial effect on the traffic, nor will it cause a nuisance or serious hazard to vehicles or pedestrians. The Board finds that the proposed use will not remove any existing low or moderate-income housing in the Town.

Accordingly, the Board makes the following findings pursuant to **Sections 5.09 and 9.5:**

1. The location, topography, vicinity and natural features of the site make it particularly suitable for the proposed subdivision and construction of a new parking area on the lot.
2. The use as proposed by the petitioners will not adversely affect the neighborhood.
3. There will be no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
5. The proposed subdivision and new parking area on the lot will not have a significant adverse affect on the supply of housing available for low and moderate income people.

Accordingly, the Board grants special permits pursuant to **Sections 5.43 and 6.04.12** to subdivide the lot at 71 Harvard Avenue and to transfer one parcel to the adjacent lot at 63 Harvard Avenue and construct a parking lot per plans titled "63-71 Harvard Ave., Brookline, MA," prepared by O'Sullivan Architects and last dated August 30, 2007, and August 14, 2007, and the site plan prepared by James Abely and last dated August 23, 2007, subject to the following conditions:



1. Prior to issuance of a building permit, a final site plan, indicating parking area materials, drainage details and utilities, and the easement on 71 Harvard Avenue, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to issuance of a building permit, a final landscaping plan, indicating planting types and locations, fencing materials, lighting and all counterbalancing amenities, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to issuance of a building permit, final elevations shall be submitted to the Preservation Commission and Planning Board for review and approval.
4. Prior to issuance of a building permit, an ANR plan indicating the subdivision of 71 Harvard Avenue and the transfer of a portion of the rear of the lot to 63-67 Harvard Avenue, as reflected in the site plan prepared by James Abely and last dated August 23, 2007, shall be submitted to the Planning Board for endorsement. This plan shall also indicate any easements that exist on either lot.
5. Prior to issuance of a certificate of occupancy, the parking spaces in the parking area along the eastern property line shall be striped or otherwise delineated.
6. Prior to the issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and signed by a registered architect; 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds; and 4) evidence that the ANR plan including easements, if any, are recorded at the Registry of Deeds.

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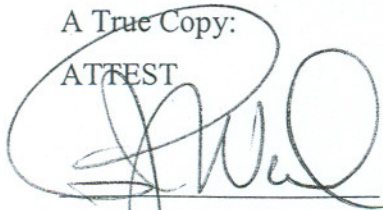
Unanimous Decision of  
The Board of Appeals

  
Enid Starr

Filing Date: December 11, 2007

A True Copy:

ATTEST



Patrick J. Ward  
Clerk, Board of Appeals